

To Be or Not To Be Independent

Westminster Reforged

For most New Zealanders the passing of the Statute of Westminster in 1947, well after all the other settler colonies of Britain, did little more than clarify the country's parliamentary sovereignty, rather than usher in heroic independence and end the settlement's colonial legislative immaturity.¹¹ However, New Zealand's cultural conditions were more complex than they appeared. James Belich, in the second volume of his monumental history of New Zealand, *Paradise Reforged*, argues that New Zealand's record is a unique one based on fundamental links especially with Britain. Belich states that this settler colony engaged in the process of what he cleverly labels 'recolonisation' to become a 'Better Britain' and 'neo-Britons', a quest he believes only ended in the 1970s, well after Canada and Australia had gone through similar relationships with Britain.

As Belich points out this does not simply mean New Zealand's relationship with Britain was submissive. It is more accurate to state that key ideological, economic, cultural, and social relationships pushed this 'periphery' colony to naturally look to the metropolitan Old Country for inspiration and in turn propelled New Zealand into engaging in 'inverse colonialism', which often, and unintentionally, created distinctive and even unintended mutations from the original gene – Britain.¹² New Zealand's process of British and Westminster constitutional 'patriation' would be no different. New Zealand could not and did not

11 A different version of this chapter will appear as 'Independence and identity ignored? New Zealand's reactions to the Statute of Westminster', in *National Identities* to be published by Routledge in 2010.

12 James Belich (2001) *Paradise Reforged: A history of the New Zealanders from the 1880s to the year 2000*, Auckland: Allen Lane, pp 11–12.

provide a perfect clone, despite the hopes of its leaders; instead it was more a deceptive and shadowy South Pacific simulacrum – Westminster Reforged.

J C Beaglehole, an earlier New Zealand historian, recognised that despite the country's seemingly clear constitutional progression from colony to nation-state there was still much of interest for the 'historian's microscope'. This captivating social scientist was able to peer through his unique lens and identify the fascinating development of New Zealand national identity through constitutional evolution, which can be viewed by its curious domestic institutional inoculations. New Zealand has often been viewed as the model colony and later the model Westminster. However, this South Pacific realm did not grow meekly or completely with unquestioned imperial injections and interventions. Without completely rejecting or accepting, in Bagehot's terms, 'dignified' British and 'efficient' Westminster remedies (both consciously and unconsciously), the New Zealand body politic was quite capable of being immune to such advice and by its constitutional and cultural features stood out from the other daughters of Empire. The main finding of Beaglehole's early analysis was the remarkable result that New Zealand 'managed to act as an independent nation without being independent. It managed to act independently, even – so paradoxical, so subtle, is the growth of British children – while deploring independence'.¹³

New Zealand's constitutional and executive traits would be no different. Despite one academic opening his analysis of New Zealand politics from afar that 'New Zealand's history is short and its inhabitants few',¹⁴ the history of constitutional government went through a gradualist progression similar to that of other settler colonies, while the influence of its citizens consistently belied the sparseness of the population. Premiers and later prime ministers from Seddon to Savage

13 J C Beaglehole (1954) 'The development of New Zealand nationality', *Journal of World History* 2(1): 106–107.

14 R S Milne (1966) *Political Parties in New Zealand*, Oxford: Oxford University Press, p 1.

were able to impress upon London New Zealand's views well before the advent of formal legal independence in 1947.

Very early in its history was the colony able to claim a 'Constitution'. The first document to claim this exalted status was the New Zealand Constitution Act 1852, which replaced earlier statutory attempts. This Act emanated, naturally, from the United Kingdom, and its full title was, 'An Act to grant a Representative Constitution to the Colony of New Zealand'. The provisions of this Act established six provinces (which were abolished in 1875, establishing the country's enduring enchantment with unitary government) and a central parliament named the General Assembly, which consisted of the governor, an appointed Legislative Council, and an elected House of Representatives. With certain imperial caveats the General Assembly was granted the ability to make laws for the 'peace, order and good government' of the colony.¹⁵ The Act established parliamentary government, but interestingly it lost the appellation 'Constitution' after only a few years.¹⁶ Not for the last time would New Zealanders show suspicion at attempts to enter such titles into their political lexicon. Perhaps this aversion can be answered by Beaglehole, writing in the 1950s, that 'the truth is that New Zealanders had little talent or desire for abstract constitutional thought'.¹⁷

New Zealanders may not have been inclined to enter the theoretical mêlée of constitutional sophistry, but they were quite adept at the efficient practical application of constitutional abstracts to deal with New Zealand conditions. New Zealand's assumption of dominion status in 1907 at the instigation of Prime Minister Sir Joseph Ward, brought the country in line with settlements like Canada and Australia but in reality little changed and despite Ward's excitement, the new Dominion quickly forgot its new lofty status as the public, like the politicians,

15 Section 53 of the New Zealand Constitution Act 1852 (Imp).

16 K J Scott (1962) *The New Zealand Constitution*, Oxford: Oxford University Press, pp 1–2.

17 J C Beaglehole (1954) 'The development of New Zealand nationality', *Journal of World History* 2(1): 106–107, p 115.

‘barely noticed’.¹⁸ Dominion status ‘was a change more in nomenclature’ than anything else since New Zealand political and constitutional practices, as well as outlook, went on as before.¹⁹ This was exemplified at the end of World War One when, at the Paris Peace Conference, New Zealand was admitted in its own right and signed and ratified Versailles as well as entering the League of Nations on its own. Rather than excite the passions of attaining national identity, the senior members of the Reform Government such as Sir Francis H D Bell and W Downie Stewart were quick to raise panic at any thought of independence. The prime minister, Ulsterman William Ferguson Massey, assured the members across the House of Representatives that:

I have never liked the arrangement which was made in connection with the League of Nations. There was one dangerous feature in it. I did not agree with everything that has been said, that in signing the Peace Treaty we had become independent nations.²⁰

Indeed on the 50th Anniversary of Dominion Status in 1957 the slightly puzzled British High Commission in Wellington reported home that ‘there were no public celebrations and the tone of comment was light-hearted rather than earnest’.²¹ The British researched the anniversary and could find ‘no Opposition from any United Kingdom quarter to grant of Dominion status for New Zealand’ in 1907 and that the ‘only opposition we know of was from ... New Zealanders’ in the

18 Gavin McLean (2006) *The Governors: New Zealand’s governors and governors-general*, Dunedin: Otago University Press, p 160.

19 Angus Ross (1972) ‘Reluctant dominion or dutiful daughter? New Zealand and the Commonwealth in the inter-war years’, *Journal of Commonwealth Political Studies* 10(1): 28–44, p 29.

20 Cited in Angus Ross (1972) ‘Reluctant dominion or dutiful daughter? New Zealand and the Commonwealth in the inter-war years’, *Journal of Commonwealth Political Studies* 10(1): 28–44, p 30.

21 4 October 1957, DO 35/8068, British National Archives.

move from the 'knickerbockers of a colony to the long trousers of a Dominion'.²²

Resistance to other constitutional matters was no different, and New Zealand's attitude was unique in the world and the Empire since, as Sir Geoffrey Palmer assesses, 'reluctance to take power when it is offered is not often met within constitutional history'.²³ While the other Dominions manned the bellows with Britain, which enthused the winds of change for constitutional independence within the Commonwealth, they became, in Angus Ross's memorable phrase, 'gentle zephyrs before they reached New Zealand shores'.²⁴ However, it is too easy to chastise the local leaders for their resistance to constitutional and national independence of this defensive Dominion. These leaders were accurately reflecting the wishes of their voters – regardless of party affiliations. Though a 'dutiful daughter dominion' New Zealand's leaders in the early 20th century 'were at once true interpreters of New Zealand and staunch Imperial statesman' and as such 'their loyalty ... was neither blind nor dumb'.²⁵ As one modern scholar has observed, the pre-1935 leaders displayed an instinctive realism that served the country's needs and mood at the time and was certainly the rational choice for New Zealand.²⁶

New Zealand's economic and security interests were indelibly linked with Britain and its Empire, and New Zealand's leaders protected this relationship. In the constitutional realm New Zealand's Westminster transplantations outwardly were normal for a settler colony, but the

22 1 October 1957, DO 35/5091, British National Archives.

23 Geoffrey Palmer (1992) *New Zealand's Constitution in Crisis: Reforming our political system*, Dunedin: John McIndoe, p 45.

24 Angus Ross (1973) 'New Zealand Governors-General in the inter-war years', in G A Wood and P S O'Connor (eds) *W. P. Morrell: A Tribute*, Dunedin: University of Otago Press, p 203.

25 F L W Wood (1971) *The New Zealand People at War: Political and external affairs*, Wellington: A H & A W Reed, pp 16–18.

26 See David J McCraw (2002) 'The zenith of realism in New Zealand's foreign policy', *Australian Journal of Politics and History* 48(3): 353–368.

country's constitutional practices and powers were not simply a miniature Westminster, as is discussed below. New Zealand as much as it mimicked the 'dignified' parts of the British constitution was constitutionally governed by the 'facts of the local situation, and the conventions built up locally in the past ... dictated events'. The powers of the Houses of Parliament, the cabinet, the prime minister, and the governor and later governor-general were formed through a process of 'autochthonous evolution'²⁷, which would solidify as strong executive power emanating from the prime minister and *his* cabinet. New Zealand, despite seeming to abhor constitutional developments, faced in the post-war era a vast array of constitutional changes that would formalise and simplify 'efficient' executive dominance centred in the cabinet room. While culturally New Zealand would look to Britain, its institutional development and practices were from its own soil. Thus, New Zealand would have a recolonised constitutional structure with a hybrid of cultural dependence and indigenous institutional self-determination. This would become the actuality, whatever the formal and 'dignified' garb of the constitutional niceties. The juxtaposition of 'dignified' constitutional formality with 'efficient' executive power realities along with the paradox of dependence and independence is neatly illuminated with the issues generated by the adoption of the independence-enacting Statute of Westminster in 1947, which ended New Zealand's parliamentary infantilism.

The Statute of Westminster – to be or not to be independent?

Not all constitutional developments within the Empire can be characterised as young cubs of settler colonies prising concessions from a weary British lion. In fact, as John Darwin has stated, 'Dominionhood was not the most that the Dominions could extract from the grudging

27 D K Fieldhouse (1962) 'Autochthonous elements in the evolution of dominion status: The case of New Zealand', *Journal of Commonwealth Political Studies* 1: 85–111, pp 108–109.

Imperial centre: it was the most that the internal politics of the Dominions themselves would permit'.²⁸ The Statute of Westminster *was* meant to be something important. The Statute of Westminster 1931 was not in itself a remarkable piece of legislation, but it did for the Dominions have symbolic value in legitimising their legislative sovereignty, which, basically, in practice had been exercised anyway. Emanating with wistful impact, former prime minister Arthur Balfour, now returned as an earl and lord president, composed with his aristocratic nonchalance a declaration for the Imperial Conference 1926. In essence this declaration provided for the Dominions and the United Kingdom to be:

autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.²⁹

The Statute of Westminster recognised the equality of the Dominions and established legally their independent powers without hindrance, and, crucially in the cultural sense, at the same time maintained the 'dignified' Crown as the common constitutional denominator. It was promulgated to erase any doubts over the Dominions' legal powers and addressed the demands of the campaigning Dominions Canada, Ireland, and South Africa. The Irish, predictably, welcomed the new legislation. As P McGilligan told the Dáil Éireann (the lower house of parliament) with colourful candour in July 1931, the Statute of Westminster's adoption meant that 'the

28 John Darwin (2001) 'A third British Empire? The dominion idea in imperial politics', in Judith M Brown and W Roger Louis (eds), *The Oxford History of the British Empire: Volume 4 – The Twentieth Century*, Oxford: Oxford University Press, p 71.

29 'Report of the Inter-Imperial Relations Committee, Imperial Conference, 1926' (1938) in Arthur Berriedale Keith (ed) *Speeches and Documents on the British Dominions 1918–1931: From self-government to national sovereignty*, London: Oxford University Press, p 161.

[British] King acting on the advice of the British Government can no more contract for the Irish Free state than can the King of Italy or the Mikado of Japan'. For the Irish the fundamental rationale was 'that there must be uprooted from the whole system of this State the British government' and, though the British King would remain, he 'is a King who functions entirely, so far as Irish affairs are concerned, at the will of the Irish Government'. The Statute of Westminster was pushed and passed since Ireland 'had to get completely rid of any power, either actual or feared, that the British Government had in relation to this country'.³⁰ In contrast, George Forbes told Britain and the Dominions, in words that any New Zealand prime minister would have echoed until the 1970s, on the country's attitude towards constitutional change:

New Zealand has not, in any great measure, been concerned with the recent development in the constitutional relations between the members of the British Commonwealth of Nations. We have felt that at all times within recent years we have had ample scope for our national aspirations and ample freedom to carry out in their entirety such measures as have seemed to us desirable. We have valued and still value our close connexion with the United Kingdom and with our sister Dominions and we should have been well content to allow constitutional relationships to settle themselves in the time honoured way, in accordance with the necessities of the position and the requirements of the time.³¹

The New Zealand attitude towards the Statute of Westminster and constitutional development was at one extreme while Ireland's was at

30 Speech by P McGilligan, Dáil Éireann, 16 July 1931, in Arthur Berriedale Keith (ed) (1938) *Speeches and Documents on the British Dominions 1918–1931: From self-government to national sovereignty*, London: Oxford University Press, pp 240–242.

31 George Forbes' introductory speech at the Imperial Conference, 1 October 1930, in Arthur Berriedale Keith (ed) (1938) *Speeches and Documents on the British Dominions 1918–1931: From self-government to national sovereignty*, London: Oxford University Press, p 209.

the other – both were, by the flexibility and fluidity of Westminster words, correct despite their contrary interpretations.

An authoritative scholar on the Statute of Westminster generously described New Zealand's reception as 'lukewarm'.³² In fact New Zealand did not see any need for this 'poisonous document'³³ as the prime minister, Gordon Coates, described it, while Sir Francis H D Bell, Coates' predecessor and the first New Zealand-born prime minister referred to that 'damned Statute of Westminster propaganda'.³⁴ Both men believed the statute would lessen the bonds of Empire that upheld their country's defence, financial, and cultural needs. Significantly, for the Statute of Westminster to become law it needed to be adopted and ratified by the local dominion parliament rather than imposed by Downing Street diktat. This condition was largely a New Zealand initiative with the help of the other recalcitrant Dominions of Australia and Newfoundland to deny application of the statute until their local parliaments assented, which was explicitly stated in the statute itself.³⁵ New Zealand's reaction was predictable in light of its previous aversion to constitutional change despite the other Dominions adopting the statute almost immediately. Even Australia relented in 1942 when faced with British reversals in the war, the Japanese spectre,

32 Kenneth Wheare (1953) *Statute of Westminster and Dominion Status* (5th edition), London: Oxford University Press, p 227.

33 W David McIntyre (2007) *Dominion of New Zealand: Statesmen and status 1907–1945*, Wellington: New Zealand Institute of International Affairs, p 122.

34 W Downie Stewart (1937) *The Right Honourable Sir Francis H. D. Bell, P.C., G.C.M.G., K.C., His Life and Times*, Wellington: Butterworth & Co, p 262.

35 See especially sections 8 and 10 of the Statute of Westminster 1931; Angus Ross (1972) 'Reluctant dominion or dutiful daughter? New Zealand and the Commonwealth in the inter-war years', *Journal of Commonwealth Political Studies* 10(1): 28–44, p 34; Leslie Zines (1991) *Constitutional Change in the Commonwealth*, Cambridge: Cambridge University Press, p 7.

and Curtin's Labor government, and, unlike its neighbour across the Tasman, it already had a firm written constitutional structure with detailed federal and centre provisions.³⁶

In 1935 New Zealand elected its first Labour government under Michael Joseph Savage. This government has been viewed as one of the most influential and radical governments in New Zealand history.³⁷ New Zealand's new government, made up of trade unionists of varying socialist hues, promised change from the conservative farmer-dominated regimes of the recent past. Domestic transformation was immediately evident and even in the imperial preserve of foreign policy did New Zealand dare to challenge the Conservative Baldwin–Chamberlain governments. The Savage ministry was ideologically part of the left with the appropriate international socialist vision of world order and justice. The Labour government did not hesitate to have different opinions to those of the Conservative government in London. On crises such as the Italian and German intervention in Spain, Japanese aggression in Manchuria, and, especially, the appeasement of the Hoare–Laval deal in response to the Italian invasion of Abyssinia, the Labour government informed London that it could not support such proposals. At the League of Nations, New Zealand's representative, William Jordan, and at the Imperial Conferences, Savage and Walter Nash, voiced almost unrepentant views against the appeasement of the time.³⁸

However, despite such independence, Labour was not rejecting the Empire and Commonwealth, and there was no thought that Labour

36 Stuart Macintyre (2004) *A Concise History of Australia* (2nd edition), Cambridge: Cambridge University Press, p 192.

37 See, for example, Barry Gustafson (1986) *From the Cradle to the Grave: A biography of Michael Joseph Savage*, Auckland: Reed Methuen.

38 Malcolm McKinnon (1993) *Independence and Foreign Policy: New Zealand in the world since 1935*, Auckland: Auckland University Press, pp 15–17; Malcolm Templeton (1993) 'Beginnings', in Malcolm Templeton (ed), *An Eye an Ear and a Voice*, Wellington: Ministry of Foreign Affairs and Trade, pp 5–6.

would not support Britain in the event of war.³⁹ When war did emerge Savage pronounced a position and initiative, without any legal or diplomatic pressure from Britain, that all his predecessors would have supported. Savage professed that the cultural obligation and determination would be clearly understood in New Zealand more than elsewhere since:

for almost a century, behind the sure shield of Britain, we have enjoyed and cherished freedom and self-government. Both with gratitude for the past, and with confidence in the future, we range ourselves without fear beside Britain. Where she goes, we go, where she stands, we stand. We are only a young nation, but we are one and all a band of brothers, and we march forward with a union of hearts and wills to a common destiny.⁴⁰

However, in spite of such stirring and sincere words from Labour, words the conservative National party supported,⁴¹ there would be no great impetus towards constitutional initiative – quite the opposite. Constitutional development was viewed across the political spectrum as

39 Alister McIntosh, (1977) 'The origins of the Department of External Affairs', in Alister McIntosh (ed), *New Zealand in World Affairs, Volume 1 1945–1957*, Wellington: Price Milburn, pp 14–17.

40 Extracts from a broadcast by the Prime Minister, the Right Hon M J Savage, 5 September 1939, in Nicholas Mansergh (ed) (1953) *Documents and Speeches on British Commonwealth Affairs 1931–1952*, vol 1, London: Oxford University Press, p 491.

41 Interestingly, Sidney Holland as prime minister echoed Savage's speech when discussing the Suez Crisis in 1956. Holland told the House that, 'It was a very great man who coined the sentence, "Where Britain stands, we stand". I have said many times that we on this side of the House adopt that. I believe that that is the mood of the people of New Zealand. Where Britain stands, we stand; where she goes we go, in good times and bad': Statement by the Right Honourable S G Holland in the House of Representatives, 7 August 1956 in Ministry of Foreign Affairs (1972) *New Zealand Foreign Policy: Statements and documents 1943–1957*, Wellington: Ministry of Foreign Affairs, pp 434–435.

disloyalty to Britain, not as a necessarily rational or natural step. Many would have echoed Sidney Holland, who was proud to be ‘a Britisher through and through’ and culturally viewed anything remotely anti-British as disloyal and wrong.⁴² As one legal scholar has noted of New Zealand, ‘legal issues relating to sovereignty were dealt with at a more figurative, even emotional, level’.⁴³ The difference was that, unlike in India, the emotion was directed at promoting the relationship with Britain, not hiding or ridding it. The British noted during the 1954 election campaign that:

whatever the result of the Election, no change of substance in policies of United Kingdom interest is likely to be involved. Both the Parties which are serious candidates for power have in common their loyalty to the Crown and their devotion to the Commonwealth.⁴⁴

The situation was as Beaglehole recounted before 1947, continuing the favoured family metaphor:

New Zealand got responsible government, got control of its natives, got control (very largely) of its governor, became a titular Dominion, was dragged into Dominion status, stood by and saw the Statute of Westminster passed. But, once it had got essential control of its own internal affairs, it was not really interested in constitutional evolution; or rather its interest was that of a rigid disapproval. It is a ‘Dominion’ in spite of itself. It has not pursued, with passionate experimentation, the idea of equal nationhood; in the Imperial family it is the daughter-nation that preferred not to smoke and drink with

42 Barry Gustafson (1986) *The First 50 Years: A history of the National party*, Auckland: Reed Methuen, p 41.

43 Peter C Oliver (2005) *The Constitution of Independence: The development of constitutional theory in Australia, Canada, and New Zealand*, Oxford: Oxford University Press, p 191.

44 High Commission to Commonwealth Relations Office, 11 November 1954, DO 35/5188, British National Archives.

its emancipated sisters, that shuddered a little and drew its garments somewhat closer when Canada and South Africa began to saunter on the boulevards of the world ... New Zealand, in fact, psychologically has remained a colony ...⁴⁵

This reluctance to 'saunter on the boulevards' of constitutional progress was evidenced in New Zealand. Despite having elected one of the most transformative governments in its history and even in the Commonwealth, it was only with miserly unwillingness that acceptance of the Statute of Westminster occurred and even then a whole 12 years after Labour came to power. Labour preferred to dress the statute in traditional loyalist dress long out of fashion in most of the Commonwealth instead of procuring the latest independent, haute couture from say India's cutting edge constitutional designers. New Zealand was the very last of the Dominions to pass the Statute of Westminster, 16 years after it was available. In an era where even the importation and sale of *Lone Ranger* comics was banned as a bad influence on the public,⁴⁶ it is difficult to imagine the conscious effort in New Zealand to import in-vogue constitutional creations from afar. Ironically, New Zealand became 'independent' the same year as India did, though it 'had not quite reached the Rubicon of nationhood that India had just months earlier'.⁴⁷ New Zealand's constitutional culture towards Britain was in contrast to India's.

45 J C Beaglehole (1938) 'New Zealand in the Commonwealth: An attempt at objectivity', in New Zealand Institute of International Affairs, *Contemporary New Zealand: A survey of domestic and foreign policy*, Wellington: New Zealand Institute of International Affairs, pp 2–3.

46 James Belich (2001) *Paradise Reforged: A history of the New Zealanders from the 1880s to the year 2000*, Auckland: Allen Lane, p 318.

47 Harshan Kumarasingham (2006) 'The 'New Commonwealth' 1947–49: A New Zealand perspective on India joining the Commonwealth', *The Round Table* 95(385): 441–454, pp 444–445 and 452.

A muffled independence

On 23 February 1944, Sir Cyril Newall, the governor-general, gave the Speech from the Throne and informed the New Zealand Houses of Parliament that his ministers proposed:

to place before Parliament the question of the adoption of the Statute of Westminster, the enactment of which would bring New Zealand in line with the other self-governing Dominions. The adoption of this measure will remove doubts in the eyes of foreign powers regarding the Sovereign status of New Zealand, and will at the same time have the practical effect of removing existing legal drafting and administrative difficulties both in New Zealand and in the United Kingdom.⁴⁸

This wording and legislative statement of the Labour government's was not only far from a proclamation of independence,⁴⁹ it was also with heavy anxiety and dislike at the highest political level that it even made it into the governor-general's speech. The head of the Prime Minister's Department and Department of External Affairs, Alister McIntosh, confided to senior civil servant and New Zealand high commissioner to Canberra Carl Berendsen:

We are in a great fuss here over the adoption of the Statute of Westminster ... The Prime Minister [Peter Fraser] immediately got cold feet and wanted to cut all reference to the adoption of the Statute from the Governor-General's speech. We managed to hold him in, on the understanding that he would not be expected to bring down any legislation until after he had been to the United Kingdom and discussed the question of

48 *New Zealand Parliamentary Debates* (23 February 1944) vol 264, p 7.

49 Indeed, the British diplomatic officers observing the Speech from the Throne made no mention of the intention to ratify the independence conferring Statute of Westminster, although they did mention the selection of 200 British nurses to aid New Zealand mental hospitals. See DO 35/1121, British National Archives.

consequential constitutional amendments with the British Law Officers.⁵⁰

Fraser probably acquiesced to the speech and the statute only because doubts were being raised during wartime as to New Zealand's international status. Civil servants were concerned that:

so long as New Zealand continues to delay the adoption of the Statute, the non-expert in other countries will tend to be doubtful of our international status as compared, for example to Australia and Canada. In October, 1943, for instance, in a United States Senate debate on participation in post-war organisation, Senator Gillette objected to the use of the words 'free and sovereign' nations to define those countries with which the United States could join in the establishment and maintenance of international authority on the grounds that they might exclude the Dominions. New Zealand was specifically mentioned as a country with limitations ... It is important that there be no doubts as to our international status caused through our not adopting the Statute.⁵¹

However, this embarrassment was largely confined to the senior colleagues in Wellington. As was written at the time of the governor-general's speech, the country's diffidence to the empowering statute:

was not altogether surprising; for the time lag was great, the terms of the Statute, even if one remembers them, are not in themselves remarkably enlightening, and important as any act of parliament, its precise significance has a habit of evading

50 Sir Alister McIntosh to Sir Carl Berendsen, 25 February 1944, in Ian McGibbon (ed) (1993) *Undiplomatic Dialogue: Letters between Carl Berendsen & Alister McIntosh 1943–1952*, Auckland: Auckland University Press, p 68.

51 'Summary of reasons for which New Zealand should adopt the Statute of Westminster', 7 November 1947, Statute of Westminster 1927–1947, EA 1 159/1/5 Part 4 IA 1 123/6, Archives New Zealand/Te Whare Tohu Tuhituhinga o Aotearoa, Head Office, Wellington.

recollection. Nor, we must admit, was this particular statute very highly esteemed in New Zealand when it was first enacted.⁵²

With the above in mind it is perhaps unsurprising that further delay occurred and New Zealand's 'legislative inability' continued until 1947. Once again, combined with an aversion for constitutional change, the alarm of appearing disloyal, which could jeopardise economic and defence interests, was a significant cultural factor in ossifying resistance.

The Scottish-born former trade unionist Peter Fraser told the House as prime minister that New Zealand did not want to pass the legislation during wartime since 'Lord Haw-haw', the Germans, and the 'Japs' might use New Zealand's adoption as 'propaganda' to herald the end of Britain's influence since it could be used to suggest the unthinkable 'severance from the Old Country'. New Zealand and its government thought this, despite Britain never suggesting such a hypothesis, and even the Conservative Lord Cranborne, secretary of state for dominion affairs, 'did not ... think there was much in it' when he was consulted on the matter at New Zealand's initiative.⁵³ Fraser did not want to allow 'ill-founded accusations that Labour was anti-British' to gain credence by passing the statute during wartime⁵⁴ despite eminent New Zealand academics correctly observing at the time that ratification would not have any harmful effect with Britain.⁵⁵

52 Writers such as Crown solicitor A E Currie and Professor R O McGechan advocated the step to clear doubt on our legislative abilities: A E Currie (1944) *New Zealand and the Statute of Westminster 1931*, Wellington: Butterworth & Co; R O McGechan (1944) 'Status and legislative inability', in J C Beaglehole (ed) *New Zealand & the Statute of Westminster*, Wellington: Whitcombe & Tombs, p vii.

53 *New Zealand Parliamentary Debates* (7 November 1947) vol 279, p 534.

54 Michael Bassett and Michael King (2000) *Tomorrow Comes the Song: A life of Peter Fraser*, Auckland: Penguin, p 325.

55 See J C Beaglehole (ed) (1944) *New Zealand & the Statute of Westminster*, Wellington: Whitcombe & Tombs.

Indeed, ‘despite having social and political credentials that might seem to question the long-established tenets of New Zealand traditions, the New Zealand Labour party was just as strong as the conservative and traditionalist pro-Britain National party as upholders of the Commonwealth. Labour was more progressively Commonwealth, while National held to the older virtues of Empire and imperial dependence’.⁵⁶ Fraser especially realised the importance of the Commonwealth and its centrality to New Zealand self-interests. Labour was culturally just as royalist as the National party and firmly believed in the dignified apparatus of being a loyal British Westminster. The New Zealand Labour party’s version of independence was one that was ‘moderated by a fundamental commitment to the Commonwealth’ and in these years and for many beyond ‘both National and Labour in New Zealand stood for alignment with Britain on the great issues of the day’.⁵⁷ Fraser and New Zealand’s attitude towards independence can be perceived from his speech to an international audience at the San Francisco Conference in June 1945:

To us of the British Commonwealth it is very difficult to distinguish between self-government and independence, for to the self-governing sovereign States of the British Commonwealth, self-government is independence and independence is self-government ... We British peoples have learnt that, as well as being independent, we are interdependent, and that the future of the British Commonwealth depends upon our interdependence and co-operation.⁵⁸

56 Harshan Kumarasingham (2006) ‘The ‘New Commonwealth’ 1947–49: A New Zealand perspective on India joining the Commonwealth’, *The Round Table* 95(385): 441–454, p 446.

57 Malcolm McKinnon (1993) *Independence and Foreign Policy: New Zealand in the world since 1935*, Auckland: Auckland University Press, pp 62 and 81.

58 Statement by the Right Honourable Peter Fraser, Chair of the Trusteeship Committee of the San Francisco Conference, June 1945 in Ministry of

Fraser aside, most New Zealand politicians were concerned with domestic politics and even the Commonwealth itself was not always understood or appreciated with the transition from Empire that Indian independence catalysed in this period. The British high commissioner confided to London during Patrick Gordon Walker's visit to New Zealand as secretary of state for commonwealth relations in August 1950 that New Zealanders:

In general, for all their undoubted devotion to 'the Old Country', are in practice, much preoccupied with local affairs and it is a regrettable fact that, despite what my predecessors and I and other members of this Office have been able to do, there is still insufficient knowledge or understanding among the general public, of the office of the Secretary of State for Commonwealth Relations, its holders and its functions. Even Mr. Doidge [National minister for external affairs] referred in some of his remarks to the Secretary of State for Dominion Affairs and there are still those in New Zealand who think that the Colonial Office is the United Kingdom Department responsible for relations with their country⁵⁹

McIntosh as head of external affairs confided in mid-1948, 'I just don't see how the British Commonwealth machinery can function with the Indians, Pakistanians [sic] and the Burmese'.⁶⁰ When the 'Pakistanians' wanted to become a republic but remain in the Commonwealth and Churchill himself recommended this be accepted prime minister Holland alone of the Commonwealth prime ministers 'expressed reservations about Pakistan receiving full membership [despite the arrangement made in 1949 for India] on the grounds that

Foreign Affairs (1972) *New Zealand Foreign Policy: Statements and documents 1943–1957*, Wellington: Ministry of Foreign Affairs, p 93.

59 High Commissioner to Attlee, 25 August 1950, DO 35/8068, British National Archives.

60 McIntosh to Day, 18 June 1948, 6759–270, McIntosh Papers, Alexander Turnbull Library, Wellington, New Zealand.

full membership be reserved for countries owing allegiance to the Queen'.⁶¹ New Zealand's political culture remained in favour of the 'British' Commonwealth long after it had been refuted officially in Britain. Indeed, McIntosh went so far as to confide to British cabinet minister Lord Listowel that inserting a republican-minded India into the Commonwealth would be 'too great a sacrifice' and would impose 'serious electoral difficulties' as the 'whole conception of the Commonwealth seemed to be based on the fact of European decent'.⁶²

Loyal independence

In August 1947, just days before India gained independence, Sidney Holland, leader of the opposition, was discussing his private member's bill to abolish the Legislative Council (which is discussed in a following chapter) with the prime minister. The prime minister agreed with the National party leader on abolition and in a largely unforeseen disclosure outlined how abolition would happen. The *Evening Post* reported that:

a surprise development occurred in the House of Representatives last night when, during the second reading on the Legislative Council Abolition Bill, the Prime Minister (Mr Fraser) introduced an amendment proposing that prior to any change being made in the Constitution of the Legislature, the Statute of Westminster be extended to the Dominion.⁶³

To clean up its legislative home, New Zealand wanted to get rid of the upper chamber, but since it did not formally have the ability to do so asked Britain to help with the renovations by passing at New Zealand's request the New Zealand Constitution Amendment Act. While Britain

61 Membership of the British Commonwealth, EA 1 151/1/25, Archives New Zealand/Te Whare Tohu Tuhituhinga o Aotearoa, Head Office, Wellington.

62 Meeting with Lord Listowel, 22 March 1949, EA 1 59/3/381, Archives New Zealand/Te Whare Tohu Tuhituhinga o Aotearoa, Head Office, Wellington.

63 *Evening Post*, 7 August 1947.

passed the laws, New Zealand adopted the Statute of Westminster and officials in Wellington believed this would ‘completely remove these doubts and establish fully the competence of the New Zealand Parliament to deal with its own Constitution’ and end its colonial image.⁶⁴

Civil servants and government members clearly wanted to make it clear that the adoption of the statute was merely for legalistic reasons to provide legislative competence to make constitutional amendments and erase doubts internationally rather than to break constitutional and cultural ties with the United Kingdom. A paper from the prime minister’s desk assured its readers:

New Zealand has for long taken an independent and fully sovereign part in British Commonwealth and in international affairs. At the same time we have maintained our intimate association with the United Kingdom and with the other members of the Commonwealth. Not only the day-to-day actions of the Government and the attitude of New Zealanders to the two Great Wars, but also the actions of private individuals and groups, show that this recognition of independence and inter-dependence is part of our national way of thinking and feeling. No definitions or statutes can affect this practical position: they cannot take away New Zealand’s independent status, nor can they reduce our desire to remain associated with our friends and kinsmen. It is, however, a frequent occurrence – especially in countries which share the British legal tradition – that contemporary legal forms lag behind the actual facts. Often this does not matter; but from time to time it is necessary to bring the law up-to-date – not to alter the contemporary state of affairs, but merely to ensure that the law more accurately describes it.

64 A McIntosh to all New Zealand missions overseas re: Statute of Westminster, 19 September 1947, Statute of Westminster 1927–1947, EA 1 159/1/5 Part 4 IA 1 123/6, Archives New Zealand/Te Whare Tohu Tuhituhinga o Aotearoa, Head Office, Wellington.

Since the Peace Conference of 1919 New Zealand has been a fully sovereign country in world affairs, with the right to attend international conferences, make treaties, and send and receive foreign envoys. But the adoption of the Statute will make it impossible in the future for some foreign observers and states – unaware of the real nature of Dominion status and the modern Commonwealth – to argue, as they have done from time to time when it suited their purposes to embarrass us or Britain, that our non-adoption of the Statute and our consequent legislative inferiority should deny New Zealand the right of separate representation in world councils.⁶⁵

Fraser assured both sides of the House of Representatives that he would not engage in any legislation that ‘would do anything to lessen the ties’ and believed instead that the statute would ‘strengthen the ties between the various parts of the Commonwealth and ourselves in New Zealand and the Mother-country’.⁶⁶ However, not all were becalmed by the prime minister’s hopes. Frederick Doidge, National member of parliament for Tauranga, later external affairs minister, and later still high commissioner to London, thought the statute represented ‘a legal bill of divorcement’. Doidge spoke for certain members of parliament when he argued against passing the Statute of Westminster by citing Ireland’s remarkable behaviour as attributable to its having passed the statute. Doidge continued that Ireland’s behaviour would only encourage Pakistan and India to leave the Commonwealth. He even imaginatively argued that the economic crisis in Britain made it inopportune to request the legislation. For this former employee of the

65 ‘Notes on the purpose and effect of the adoption by New Zealand Parliament of Sections 2, 3, 4, 5 and 6 of the Statute of Westminster and the New Zealand Constitutional Amendment (Consent and Request) Bill.’ Circulated by the Prime Minister and Minister of External Affairs, Rt Hon Peter Fraser, 7 November 1947, Statute of Westminster 1927–1947, EA 1 159/1/5 Part 4 IA 1 123/6, Archives New Zealand/Te Whare Tohu Tuhituhinga o Aotearoa, Head Office, Wellington.

66 *New Zealand Parliamentary Debates* (7 November 1947) vol 279, p 534.

Beaverbrook press, New Zealand's 'loyalty to the Motherland is an instinct as deep as religion' and postulated to his fellow parliamentarians that there 'are a few "crackpots" who want to see the liquidation of the British Empire and who welcome this legislation because it will help that way'.⁶⁷

Other indicative opinion emerged, including that of Dr Martyn Finlay, Labour member of parliament for North Shore and future attorney-general and minister of justice in the third Labour government. Finlay spoke in favour of the bill and endeared himself to the House by stating that 'we love the British because the British love us. That spirit transcends all written documents'. Former law professor and future education minister and Speaker of the House Ronald Algie, National member of parliament for Remuera, though in favour of the Statute of Westminster, was concerned it would encourage Russia to claim separate representation for the Soviet States and thus increase communism's international clout.⁶⁸ With the benefit of hindsight one cannot help but agree with noted legal scholar J F Northey that the debates over the Statute of Westminster 'contain so much evidence of a gross misconception of the purpose and effect of the Statute'.⁶⁹ The opposition, though containing distress from speakers such as Doidge, did not oppose the passing of the bill, especially since, it argued, it was necessary to give the New Zealand parliament competence to pass National's proposal to abolish the Legislative Council.⁷⁰ New Zealand's reaction was culturally, however, an autochthonous one, as is seen later.

67 *New Zealand Parliamentary Debates* (7 November 1947) vol 279, pp 535–538, and see notes on Doidge, Statute of Westminster 1927–1947, EA 1 159/1/5 Part 4 IA 1 123/6, Archives New Zealand/Te Whare Tohu Tuhituhinga o Aotearoa, Head Office, Wellington.

68 *New Zealand Parliamentary Debates* (11 November 1947) vol 279, pp 550 and 554.

69 J F Northey (1965) 'The New Zealand Constitution', in *The A. G. Davis Essays in Law*, London: Butterworths, p 156.

70 W D McIntyre (1977) 'Peter Fraser's Commonwealth: New Zealand and the origins of the New Commonwealth in the 1940s', in Alister McIntosh

All these responses evinced from leading New Zealanders demonstrated at the political level an emotive reaction towards constitutional change. Unlike in India, these passions were directed at maintaining the status quo culturally and, for some, constitutionally. Fraser and his official and political supporters strained every nerve to couch the constitutional change as one that merely brought the country in line with the other Dominions. Its purpose was only to eradicate doubt as to the ability to amend the constitution and New Zealand's international status – rather than a move that signified independence from Britain. Fraser, though a strong supporter of India's inclusion in the Commonwealth, told the British cabinet secretary Sir Norman Brook that 'he would not be agreeable to taking any action which would in any way weaken the present constitutional position' to accommodate India's distaste to owing allegiance to the Crown.⁷¹ Symbolically, in the year the legislation was passed, instead of breaking with Britain, the New Zealand cabinet agreed to Attlee's plea for help during Britain's financial crisis. Cabinet sold New Zealand's primary produce to Britain below world rates and continued rationing to maximise exports to 'Home', which in 1947 still received more than 76% of New Zealand's exports.⁷² As one member of the Legislative Council exclaimed when the legislation finally passed, 'this day will not be in future celebrated as the 4th July is celebrated by the first of the family which broke away'.⁷³

(ed), *New Zealand in World Affairs Volume I 1945–1957*, Wellington: Price Milburn, pp 66–68.

71 Visit of Sir Norman Brook, 31 August 1948, EA 1 59/3/344, Archives New Zealand/Te Whare Tohu Tuhituhinga o Aotearoa, Head Office, Wellington.

72 Keith Sinclair (1976) *Walter Nash*, Auckland: Auckland University Press and Oxford University Press, pp 272–273 (Nash was minister of finance at the time); Michael Bassett and Michael King (2000) *Tomorrow Comes the Song: A life of Peter Fraser*, Auckland: Penguin, p 322; Edmund Dell (1996) *The Chancellors: A history of the Chancellors of the Exchequer 1945–90*, London: Harper Collins, p 40.

73 *New Zealand Parliamentary Debates* (21 November 1947) vol 279, p 86.

And yet, 60 years on, those few who remember their constitutional lore, consider that New Zealand had in fact formalised its independence when the Statute of Westminster received the royal assent from its war hero and governor-general Sir Bernard Freyberg on 25 November 1947. Dr Michael Cullen, deputy prime minister and deputy leader of the Labour party (as Fraser once was), told the House of Representatives in 2004, on the 150th anniversary of the first sitting of the House, that New Zealand became sovereign and independent from Britain with the adoption of the Statute of Westminster, a conclusion and connotation that differed from Fraser.⁷⁴ Michael King, a popular historian, stated the same in his widely read recent history of the country.⁷⁵ Leading current affairs publication the *Listener* advocated that 25 November should become a national holiday as it was the day ‘we gained full independence by ratifying the Statute of Westminster in 1947’.⁷⁶

However, in the 1940s New Zealand did not see the Statute of Westminster as something that ‘cut any Gordian knots’ because ‘knots there may be, but they can, it seems, be untied as they have been so far untied, by political manipulation that is independent of strictly legal status within the Commonwealth itself’.⁷⁷ As Berenson expostulated, ‘we had all the self-government we wanted ... We didn’t see the need

74 *New Zealand Parliamentary Debates* (24 May 2004) 150th Anniversary Sitting of Parliament, p 13192.

75 Dr King stated, ‘On 25 November 1947, the New Zealand Parliament finally ratified the Statute of Westminster, which gave the country complete autonomy in foreign as well as domestic affairs ... New Zealand was no longer a colony, nor a “dominion”. It was a fully independent member of the British Commonwealth’: Michael King (2003) *The Penguin History of New Zealand*, Auckland: Penguin, p 420.

76 Tim Watkins (2006) ‘Get it in writing’, *New Zealand Listener* 204(3456), 5–11 August, p 5.

77 J C Beaglehole (1944) ‘Preface’, in J C Beaglehole (ed) *New Zealand & the Statute of Westminster*, Wellington: Whitcombe & Tombs, p xiii.

for any Statute of Westminster. We were doing all right without it'.⁷⁸ New Zealand had always carried out its own constitutional wishes even if that meant going against the Sovereign's representative, who also represented England culturally and constitutionally,⁷⁹ or doing what it liked domestically on electoral and institutional matters such as the abolition of the provinces and the 'Country Quota' (these issues are discussed below).

New Zealand did accept a Commonwealth recommendation in 1948 on nationality and citizenship, which the other realms had urged. The change now allowed New Zealand to issue its own passports and grant its own citizenship status. Although many New Zealanders, including their parliamentary representatives, preferred to call themselves 'British' rather than 'New Zealander' for many years afterwards.⁸⁰ Culturally and sentimentally, however, His (and later Her) Majesty's Government in New Zealand was always careful to avoid conspicuous change to their dignified relationship with Britain. As Sir Cecil Day from London's Cabinet Office and who had worked at Government House in Wellington as a junior official from Britain, told Alister McIntosh privately:

In my time, New Zealand Governments avoided action in the belief that public opinion would interpret the step as weakening the links with the Old Country and so would be opposed to it.

78 Cited in Angus Ross (1972) 'Reluctant dominion or dutiful daughter? New Zealand and the Commonwealth in the inter-war years', *Journal of Commonwealth Political Studies* 10(1): 28–44, p 43.

79 Unlike other Dominions that had long since stopped the practice, in New Zealand the governor-general was not only the King's representative but also the representative of Britain until 1939 when the first British high commissioner arrived. The high commissioner continued to be the sole channel of communication between the two governments until 1941.

80 Michael Bassett and Michael King (2000) *Tomorrow Comes the Song: A life of Peter Fraser*, Auckland: Penguin, p 325; James Belich (2001) *Paradise Reforged: A history of the New Zealanders from the 1880s to the year 2000*, Auckland: Allen Lane, pp 318–320.

Actually I imagine, few ordinary citizens in New Zealand knew at that time what full adoption of the Statute involved. Some who did thought it would be absurd for the little country to parade its independence in this way. Up to the middle of 1935 when I left, New Zealand hadn't got used to 'Equality of Status'. It was only later that the idea lost its strangeness, following upon the many New Zealand ventures in the field of independent international action. Sentiment excepted, there does not seem to me to have been at any time since the Statute of Westminster was passed, any particular reason for avoiding its adoption.⁸¹

Most New Zealanders, if they troubled themselves over the intricacies and vagaries of the Westminster system, would have agreed with T Clifton Webb, National member of parliament for Rodney (who, like Doidge, would later become Knight Commander of the Order of St Michael and St George, foreign minister, and high commissioner to London) when Webb accepted with weary resignation the symbolic burden of the Statute of Westminster. Since Britain had no objection Webb decided to support the bill:

not with any great enthusiasm – I have no emotional enthusiasm for it, but I have less emotional opposition to it – I repeat that I have decided, after weighing up the pros and cons as I have done, to give my support to the Bill.⁸²

Fraser received, no doubt with pleasure, a personal telegram from his old friend Bill Jordan who informed Fraser that he had:

attended House of Lords today on passing through all stages of the New Zealand Constitution (Amendment) Bill. Your remark that if passing of an Act would weaken the ties between

81 Cecil Day, Cabinet Offices, London to McIntosh, 7 October 1947, Statute of Westminster 1927–1947, EA 1 159/1/5 Part 4 IA 1 123/6, Archives New Zealand/Te Whare Tohu Tuhituhinga o Aotearoa, Head Office, Wellington.

82 *New Zealand Parliamentary Debates* (7 November 1947) vol 279, p 545.

New Zealand and other parts of the Empire you would have nothing to do with it, was heartily applauded. Lords Addison, Salisbury, Samuel and Simon all spoke in support of the Bill and expressed admiration for what has been done by the people of our Dominion'.⁸³

Interestingly, of the grandees that 'heartily applauded', Viscount Simon⁸⁴ exclaimed with kindly puzzlement that, 'It is most remarkable that ever since 1857, ninety years ago, such has been the contentment with which New Zealand has lived under its existing Constitution that it has never even asked this Parliament to alter it'.⁸⁵

As Beaglehole vainly reminded New Zealanders:

We do well to be vigilant about our constitutional rights and our constitutional duties, but this is not to presuppose that the constitution is some silk-wrapped mystery, laid in an Ark of the Covenant round which alone the sleepless priests of the Crown Law Office tread with superstitious awe.⁸⁶

The reality was that since well before 1947 New Zealand could and did do what it wanted, especially by simplifying the constitutional structure without lengthy deliberation. In fact, as shall be shown, New Zealand prime ministers and cabinets with their unquestionable primacy over all others in the New Zealand political system were quite prepared to

83 Personal Telegram from High Commissioner for New Zealand in London (Sir William Jordan) to Fraser, 2 December 1947, Statute of Westminster 1927–1947, EA 1 159/1/5 Part 4 IA 1 123/6, Archives New Zealand/Te Whare Tohu Tuhituhinga o Aotearoa, Head Office, Wellington.

84 Viscount Simon was a significant player in British politics having held many high offices in various administrations including Home Secretary, Foreign Secretary, Chancellor of the Exchequer and Lord Chancellor.

85 *Parliamentary Debates*, Hansard, House of Lords, Official Report, Vol 152, No 16, Tuesday, 2 December 1947 (which accompanied Jordan's telegram to Fraser).

86 J C Beaglehole (1944) 'The statute and constitutional change', in J C Beaglehole (ed) *New Zealand & the Statute of Westminster*, Wellington: Whitcombe & Tombs, p 50.

privately play by their own rules. They established their own culture of operating British Westminster institutions, often contrary to the conventions and norms they ostensibly admired at the palaces of Westminster and Buckingham.